

MANDATE

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York on the 21st day of November, Two Thousand and Six.

PRESENT:

HON. ROBERT A. KATZMANN,
HON. RICHARD C. WESLEY,
HON. PETER W. HALL,
Circuit Judges.

Michael J. Wang, M.D.,

Plaintiff-Appellant,

v.

United States Medical License Examination Secretariat,

Defendant-Appellee,

Federation of State Medical Boards, National Board of
Medical Examiners,

Interested Parties.

Appearing for Plaintiff-Appellant:

Michael J. Wang, *pro se*, South Setauket, New York

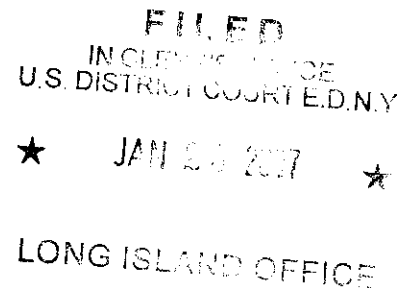
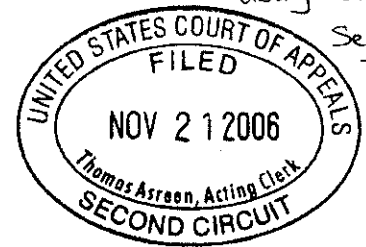
Appearing for Defendants-Appellees:

Silvia A. LeBlanc, Esq. (*admission pending*)
Morgan, Lewis & Bockius, LLP
1701 Market Street
Philadelphia, Pennsylvania

A TRUE COPY
Thomas W. Asreen, Acting Clerk
by
DEPUTY CLERK

Issued as Mandate

01/03/07



Appeal from the United States District Court for the Eastern District of New York (Seybert, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the district court be and it hereby is **AFFIRMED**.

Plaintiff-appellant Michael J. Wang, *pro se*, appeals from a judgment of the United States District Court for the Eastern District of New York (Seybert, J.) granting the defendants-appellees' motion to dismiss his action for lack of capacity. We assume the parties' familiarity with the underlying facts and procedural history.

The district court was correct to dismiss Wang's suit, as the named defendant, United States Medical Licensing Examination ("USMLE"), lacked the capacity to sue or be sued under applicable New York state law. *See Community Bd. 7 of Borough of Manhattan v. Schaffer*, 84 N.Y.2d 148, 155-56 (1994). USMLE is neither a business organization nor a governmental entity, or, for that matter, an organization at all, and is certainly an artificial entity, i.e. not a natural person. There is no New York statutory authority delegating the USMLE's, or any similar entity's, power to sue or be sued, and thus no such power exists.

Accordingly, and for the foregoing reasons, the judgment of the district court is hereby **AFFIRMED**.

FOR THE COURT:
Thomas W. Asreep, Acting Clerk

By: Richard Alcantara
Richard Alcantara, Deputy Clerk